

## ***Land Acquisition for Infrastructure and Industry in India***

**N.C. Saxena**

*Ex-Secretary to GOI,  
Department of Land Resources*

Acquisition of land by the government has emerged as the most important structural constraint in India to industrialization, urbanization and infrastructure improvement. Delays in procuring land have led to uncertainty and cost escalation. Land acquisition has drawn resistance due to inadequate compensation and loss of livelihood of the affected people, as well as the fear of involuntary displacement without proper rehabilitation. The colonial land acquisition law of 1894 in force until 2013 was relatively hostile to the interests of rural landowners, as its intent was to make land available to the industry through the government at a minimal price. The practice by most state governments until now has been to coerce the people to give up their lands by using the legal powers of eminent domain, overusing the Urgency Clause, and in some cases even through the use of force. The losers have tended to be the poorest, with few skills, often the indigenous people ("tribals"). By some estimates, more than 60 million people were displaced between 1947 and 2004, amongst whom at least 40% were tribals and 20% Scheduled Castes (the ex-"Untouchables"). Of those displaced, less than 18% were resettled. This has turned millions of independent producers into property-less labourers, an outcome that could have been avoided with imaginative land acquisition and rehabilitation policies.

Before 1990, land was acquired by the government mainly for large irrigation and other public sector projects where the use of coercive legal powers carried at least some credibility in the eyes of the public. More recently the powers of eminent domain have also been used for acquisition for private industry and real estate development resulting in growing resistance by existing land owners and users to leave the area and accept compensation, considered insufficient. The resistance has been exacerbated by a large backlog (going to 1970s in some cases) of compensation payments to displaced families that undermines the trust of the peasantry.

The new land acquisition law ("The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013") and related regulations (2014) attempt to address these problems. The new law substantially enhances compensation to the landowners and demands, among other things, that each affected household including landless labourers and tenants who were dependent on the acquired land are

either provided employment, or given a monthly inflation-indexed sum of Rs 2,000 (about US\$ 33) for twenty years, or a lump sum of 0.5 million rupees (about US\$ 8,200).

The new law makes a distinction between land needed for government, and for private (including public-private partnership-PPP) projects. Consent of affected landowners is not required for the former category but at least 80% of affected landowners must agree in the case of private sector projects, and 70% in the case of PPPs. Here, the land acquirer ("Requiring Body") negotiates the terms of rehabilitation and compensation with landowners through a well-defined process designed to ensure transparency and fairness of the process. For government projects, where consent is not needed, the new Law calls for a compensation equal to double the market price in urban areas, and two to four times (depending on the location) the market value in rural areas. Provisions are included that protect the land owners from fraudulent underestimation of the market value.

It is estimated that the average direct cost of land and livelihood rehabilitation under the new law, assuming no delay or litigation, would vary between 2 to 5% of the typical project cost. In the case of very large industrial projects mulled in India in recent years (such as the POSCO steel plant in Odisha), allocating a mere 1 per cent of expected total project cost to land acquisition and livelihood restoration would turn the original landowners into multi-millionaires.

The new Act:

- (1) Contains special safeguards for tribal communities and other disadvantaged groups, as no land (not even for government) can be acquired in tribal areas without the consent of the Gram Sabhas (village councils);
- (2) Provides for enhanced benefits for the Scheduled Castes and Scheduled Tribes;
- (3) Contains safeguards against arbitrary displacement; no one can be dispossessed until and unless all payments have been made and alternative sites for the resettlement and rehabilitation made available;
- (4) Lists the infrastructural amenities that have to be provided at the site receiving displaced individuals;
- (5) Provides (subject to a residency record) for new houses for all affected families whose original dwellings have been acquired.

The new Act also gives the government the right to take the land on lease instead of acquiring it outright. However, since use of land is a state subject, such an

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option and other more flexible arrangements would first require that states amend their tenancy laws. A ban on leasing was imposed after Independence in almost all states of India to encourage owner-cultivation and to give security of tenure to sharecroppers and tenants. Although such laws should continue in tribal areas where agricultural markets are not well developed, the leasing ban elsewhere has acted as a brake on more dynamic and pro-landless use of land and inhibited negotiated outcomes as an alternative to coercive land acquisition.

Despite concerns during the early stages of the new land act formulation, that the act would prohibit negotiated settlement, the Act leans in favour of such negotiations. By substantially increasing the amounts of compensation, the Act in fact encourages the ultimate acquirer (usually the industry) to directly negotiate with the land owner/user rather than relying on Government intervention. The Act gives an option to the farmers to opt for a government compensation package if the offer by the acquirer is found wanting. Similarly, the acquirer retains the right to turn to the Government to acquire the land if the direct negotiations fail.

However, not everything about the new Law can be considered a boon. The new law deals poorly with the legitimate concerns of industry which is less worried by the one-time cost of land acquisition and livelihood restoration, than about delays in securing possession that can play havoc with cost projections. A close examination of the Act as it exists now suggests that acquisition of even one acre of land in current Indian conditions would take at least three or four years as the proposal would have to pass through about a hundred hands. The Act establishes several new committees, each with its activists and experts (real or otherwise). The new law stipulates that for all cases of acquisition, a Social Impact Assessment be conducted by an independent body, only to be vetted by another expert group. In addition, a Rehabilitation and Resettlement (R&R) Committee, a State Level Committee, and a National Monitoring Committee are to be created to deliberate over reports generated by junior committees. Delay in completion of formalities, likely under such a complex structure, would delay payment of compensation thus harming farmers and causing uncertainty in their rehabilitation.

A simpler solution would have been to delegate powers to the District Collector to acquire up to 100 acres of land without Committees and without any reference to the state governments. The Collector would obtain landowners' consent and fix compensation through

negotiations without any upper limit, and thus make land available to the project in a few months' time.

The Act does not deal satisfactorily with frequently observed rapid appreciation in price of the acquired land, giving rise to resentment among the original owners who feel cheated, and deterring other potential landowners to engage in negotiations. To avoid such an outcome, a part of the appreciated value should be given to the original land owner. The Act defeats this idea by stipulating that a share of capital gain should be paid only if no development has taken place on the land in question. Spurious minimal "development" by the acquirer then releases him from this obligation harming the overall progress of land acquisition.

The Act also fails to determine compensation for the affected, when forest lands and water bodies are repossessed by governments and passed on to private bodies. In the absence of a suitable clause, the poorest people as users of common land & forests and slum dwellers will be deprived of their livelihoods without any R&R benefits.

With the change of government in May 2014, there is a willingness to return to the Act and consider modifications, in particular, ways of simplifying the procedures so that land is available to the acquiring body, and compensation is given to affected families, as soon as possible. The percentage of landowners whose consent is required in land acquisition for private and PPP purposes might also have to be reviewed. The case for a mandatory social impact assessment prior to land acquisition for linear projects or projects where total land acquired is, say, less than 100 acres, would also deserve a review.

Such modifications would recognize that the price of land acquisition has two elements. One is the direct price paid for acquisition, and rehabilitation and resettlement (R&R), which goes directly to the affected households. The second element is an indirect price that includes transaction costs (such as the cost of conducting social impact assessments, running the new multiple-layered acquisition bureaucracy, and so on), and opportunity costs (production forgone as a result of delays in securing approvals). The direction of any amendment to the new law should be to retain the direct costs and drastically cut down on the indirect costs. The 2013 Act does not strike a good balance between the two.

In conclusion, the 2013 law completely replaces the colonial Land Acquisition Act, 1894. The new legislation ends the era of forcible acquisitions, enhances compensation for both land-owners and landless families significantly, provides for the essential resettlement and

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rehabilitation of families displaced on account of land acquisition, curtails the abuse of the “urgency” clause, gives farmers a share in the appreciated value of the acquired land, and also gives village councils new powers

to decide on land acquisition. However, there is still room for improvement so that the whole process is not dilatory and does not retard economic growth.